

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LONNIE ENGEL,

Plaintiff,

v.

FIRST AMERICAN TITLE
INSURANCE COMPANY, a
Washington corporation, et al.,

Defendants.

CASE NO. C09-5140BHS

ORDER OF CLARIFICATION
AND DIRECTIVE TO CHOOSE
A COURT OF ACTION

This matter comes before the Court on Plaintiff's ("Engel") motion for clarification/instruction regarding the filing of a second amended complaint (Dkt. 61) and Defendant Nationstar Mortgage LLC's ("Nationstar") motion to dismiss Engel's complaint against Nationstar for failure to state a claim under Fed. R. Civ. P. 12(b)(6) (Dkt. 54). The court has considered the pleadings filed in support of the motion and the remainder of the file, and hereby orders Engel to take action as stated herein.

I. PROCEDURAL AND FACTUAL HISTORY

On March 16, 2009, Engel filed his original complaint against Defendants, including Nationstar (Dkt. 1). On April 20, 2009, Engel filed his first amended complaint ("FAC") (Dkt. 12), and on March 31, 2010, moved to file a second amended complaint ("SAC") (Dkt. 43). Filed with that motion was a proposed SAC. *Id.* The Court granted Engel leave to file a SAC and directed him to do so electronically. Dkt. 44.

1 On July 15, 2010, Nationstar moved the Court to dismiss Engel's SAC, citing Fed.
2 R. Civ. P. 12(b)(6), for failure to state a claim. Dkt. 54. The Court renoted this motion for
3 consideration on August 20, 2010, pursuant to stipulation of the parties. Dkt. 64.

4 On August 9, 2010, Engel filed a motion for clarification/instruction regarding the
5 filing of the SAC. Therein, Engel contends that there was no SAC on file. Dkt. 61.¹ On
6 August 18, 2010, Nationstar responded in opposition to Engel's motion for clarification.
7 Dkt. 65. Engel did not reply.

8 II. DISCUSSION

9 This order is to clarify for Engel and other parties in the matter as to how Engel
10 should proceed. Engel's motion for clarification comes shortly before the trial date in this
11 case. *See* Dkt. 42.

12 Within Engel's motion for clarification (Dkt. 61), he contends that he has never
13 properly filed his SAC. *See* Dkt. 44 (granting leave to file the SAC and directing counsel
14 to e-file the document). In fact, the SAC has not been filed other than as an attachment to
15 the motion to file it. *See* Dkt. 43, Attachment 1.

16 Also within the motion for clarification, Engel asserts, among other things, that the
17 SAC as drafted is incomplete, requires further evidence, and that at least one additional
18 party should be added (Fannie Mae). *See* Dkt. 61 at 3-5. Such issues are the proper
19 subject of motions to amend, compel, and join parties. Engel has made no such motions
20 with respect to the issues presented herein.

21 Further, Engel acknowledges the need to respond to Nationstar's motion to dismiss
22 his SAC (Dkt. 54). No response has been filed at this time. The Court recognizes that
23 Engel has been waiting for resolution of the instant motion for clarification.

24 Any claims beyond the scope of the previously authorized SAC would be the
25 subject of a motion for leave to file a third amended complaint, which Engel has not
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27 ¹The Court notes that the time between the second amended complaint and Engel's motion
28 for clarification, both parties had a change of counsel. Dkts. 49, 59, 60.


1 moved for and would be unlikely to prevail on, considering the Court's schedule in this
2 matter. Without Engel filing such a motion, he shall either file and proceed under the
3 SAC previously authorized by the Court (Dkt. 44) or proceed under the FAC (Dkt. 12). If
4 Engel wishes to proceed under the SAC (Dkt. 43, Attachment 1), he shall officially file it
5 on or before Friday, September 10, 2010. Otherwise, the Court will deem the FAC as the
6 operative complaint in this case.

7 Although the date to respond to the motion to dismiss (Dkt. 54) has passed, the
8 Court will permit Engel to file a response no later than this Friday, September 10, 2010.
9 Nationstar may file a reply no later than Wednesday, September 15, 2010.

10 **III. ORDER**

11 It is hereby **ORDERED** that Engel is directed to take a course of action as
12 outlined herein.

13 DATED this 8th day of September, 2010.

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16 BENJAMIN H. SETTLE
17 United States District Judge
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